

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

11 ROBERT MCGUIRE, ) 3:10-cv-00488-HDM-WGC  
12 Plaintiff, )  
13 vs. ) ORDER  
14 TOM STUBBS, et al., )  
15 Defendants. )  
16 \_\_\_\_\_

17 Before the court is the defendant's motion to consolidate the  
18 case at bar with another pending matter before the District of  
19 Nevada, case no. 3:10-cv-00800 (#105). The court has considered the  
20 motion as well as the plaintiff's response (#106) and the  
21 defendant's reply (#108) and hereby **denies** the motion to  
22 consolidate.  
23

24 Under the Federal Rules of Civil Procedure, Rule 42, actions  
25 may be consolidated if they "involve a common question of law or  
26 fact." Fed.R.Civ.P. 42(a)(b). The court has broad discretion when  
27 considering whether issues of law or fact are similar enough to  
28 justify consolidation.

1       The cases under consideration for consolidation here are not  
2 based on similar issues of law. In the case before this court, the  
3 issue of law is whether the plaintiff's Eighth Amendment rights  
4 were violated when prison officials allegedly used excessive force  
5 to remove him from his cell at Ely State Prison. In case no. 3:10-  
6 cv-00800 (the "due process" case), the issue of law is whether the  
7 plaintiff's Fourteenth Amendment rights were violated when he was  
8 allegedly classified as a "High Risk Prisoner" without proper due  
9 process.

10       Further, the cases are not based on similar questions of fact.  
11 In the case at bar, the material facts are the level of force that  
12 was used by the prison officials to extract the plaintiff from his  
13 cell two hours after the incident that led to the disciplinary  
14 action that is the basis for the plaintiff's due process claim. In  
15 the due process case, the material facts are the chain of events  
16 that led to the plaintiff's classification as a "High Risk  
17 Prisoner."

18       For the forgoing reasons, the court finds that the defendant  
19 has failed to establish that the issues of law and fact are  
20 sufficiently similar in both cases to justify consolidation.  
21 Therefore, the defendant's motion is **denied**.

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23       **IT IS SO ORDERED.**

24       DATED: This 21st day of December, 2012.  
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27       \_\_\_\_\_  
28       UNITED STATES DISTRICT JUDGE